7-20-2017

State v. Sittre Respondent's Brief Dckt. 44571

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44571**
Plaintiff-Respondent,	)	
	)	**Bannock County Case No.**
v.	)	**CR-2014-15695-FE**
	)	
JONNINE LISA SITTRE,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Jonnine Lisa Sittre appeals from her judgment of conviction for felony DUI. On appeal she challenges the denial of her motion to withdraw her plea.

Statement Of The Facts And Course Of The Proceedings

Two officers were on patrol on November 10, 2014, when one of them saw a vehicle flip over near an overpass. (R., p. 40.) They responded to the vehicle and found Sittre exiting the car. (Id.) They assisted her up an embankment to the road. (Id.) She appeared intoxicated. (Id.) Sittre said that she was the only person in the vehicle, but that there were two puppies in the car. (Id.) After Sittre was transported to the hospital, the officers received information that she may have been involved in a shoplifting incident shortly before the accident. (Id.) A search revealed stolen Hostess snacks in Sittre's purse, which was in turn wrapped around the steering wheel. (Id.) Officers began the process of obtaining a warrant for a blood draw, but were informed by hospital staff that they had provided Sittre fluid and medication, which would alter the results of the blood test. (R., pp. 40-41.) Officers instead obtained a warrant for hospital records and lab results. (R., p. 41.) Upon her release from the hospital, police arrested Sittre for DUI and on three outstanding warrants. (R., pp. 41-42.) The medical records showed a blood alcohol content of 0.254. (R., p. 41.)

The state charged Sittre with felony DUI with an enhancement for being a habitual offender. (R., pp. 135-40.) She pled guilty to felony DUI on May 11,

2015, as part of a plea agreement in which the state withdrew the habitual offender enhancement. (R., pp. 195, 206-07.) The district court released Sittre with instructions to "report to Court Services" to supervise her pre-sentencing release. (R., p. 207.) After about a month of rather spotty compliance with the terms of her release, Sittre failed to keep her appointments with Court Services and failed to appear at the sentencing hearing, and on June 23, 2015, the district court issued bench warrants for her arrest. (R., pp. 209-16.)

Sittre was arrested on the bench warrant about six months later, on December 20, 2015. (R., pp. 214, 216.) The district court set the matter for sentencing on February 22, 2016. (R., pp. 221-22.)

Four days prior to the re-set sentencing, Sittre filed a *pro se* motion to withdraw her guilty plea. (R., p. 225.) The motion claimed, in part, that Sittre had "new evidence that would hopefully clear her of DUI" and attached a copy of a document. (R., pp. 225-27.) Defense counsel later filed a motion to withdraw the guilty plea, asserting Sittre "did not fully understand and appreciate the nature of the proceedings" when she pled guilty; "her ability to understand and appreciate her choices was compromised" by a lack of medication; and she "has obtained information that confirms her position that she was not driving at the time of the alleged offense." (R., pp. 239-40; see also 3/14/16 Tr., p. 30, L. 16 – p. 32, L. 20.) The new information was that a transient from Utah named Barry had in fact been driving the car. (R., pp. 243, 246.) The district court denied the motion. (R., pp. 255-56, 259-60; 3/14/16 Tr., p. 36, L. 16 – p. 44, L. 6.)

The district court scheduled sentencing for March 21, 2016. (R., p. 260.) For reasons that do not appear in the record, the parties appeared for sentencing on April 11, 2016. (R., p. 261.) At that time Sittre requested a continuance to provide "input in [the] PSI" that she had refused to provide in February. (R., pp. 261, 266.) The district court granted the continuance. (R., pp. 261-63.) Sittre failed to appear for her appointment with the pre-sentence investigator, and the district court vacated the sentencing hearing and issued a bench warrant. (R., pp. 264-66.) Sittre was arrested about three months later, on August 5, 2016. (R., p. 272.)

On October 3, 2016, the district court sentenced Sittre to ten years with five years fixed and retained jurisdiction. (R., pp. 296-97, 299-301.) Sittre filed a timely appeal from the entry of judgment. (R., pp. 303-05.)

ISSUE

Sittre states the issue on appeal as:

> Whether the district court abused its discretion when it denied Ms. Sittre's pre-sentence motion to withdraw her guilty plea.

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Sittre failed to show that the district court abused its discretion when it denied her motion to withdraw her guilty plea?

ARGUMENT

Sittre Has Failed To Show That The District Court Abused Its Discretion When It Denied Her Motion To Withdraw Her Guilty Plea

A. Introduction

The district court applied the correct legal standards to the motion. (3/14/16 Tr., p. 36, L. 16 – p. 37, L. 11.) The district court reviewed the transcript of the guilty plea hearing and determined that Sittre's claims of involuntariness of the plea stemming from lack of understanding or lack of medication were disproved by the plea colloquy. (3/14/16 Tr., p. 37, L. 12 – p. 39, L. 3; p. 43, Ls. 20-23.) The district court further found that Sittre had admitted her guilt factually. (3/14/16 Tr., p. 39, L. 4 – p. 43, L. 19; p. 43, L. 23 – p. 44, L. 4.) The district court found no just cause to allow Sittre to withdraw the plea. (3/14/16 Tr., p. 44, Ls. 5-6.)

On appeal Sittre does not contest the district court's factual findings that her plea was voluntary, but challenges the denial of the motion insofar as it was based on a claim of new evidence that a transient named Barry was the actual driver. (Appellant's brief, pp. 6-11.) Because the district court correctly found that Sittre had admitted her guilt factually when she entered her guilty plea, Sittre's argument is without merit.

B. Standard Of Review

Granting or denying a motion to withdraw a guilty plea "is within the discretion of the trial court." State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008). Where the motion is made before sentencing, such

discretion "should be liberally exercised." State v. Wyatt, 131 Idaho 95, 97, 952 P.2d 910, 912 (Ct. App. 1998).

> When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason.

State v. Hartsock, 160 Idaho 639, 640–41, 377 P.3d 1102, 1103–04 (Ct. App. 2016).

C. Sittre Has Failed To Show Error In The District Court's Determination She Failed To Prove A Just Reason For Withdrawal Of Her Plea

"Withdrawal of a presentence guilty plea is not an automatic right, and the defendant has the burden of proving that the plea should be allowed to be withdrawn." State v. Dopp, 124 Idaho 481, 485, 861 P.2d 51, 55 (1993). "A defendant seeking to withdraw a guilty plea before sentencing must show a 'just reason' for withdrawing the plea." State v. Ward, 135 Idaho 68, 72, 14 P.3d 388, 392 (Ct. App. 2000). "Failure to present and support a plausible reason, even absent prejudice to the prosecution, will dictate against granting the withdrawal." State v. Henderson, 113 Idaho 411, 414, 744 P.2d 795, 798 (Ct. App. 1987). "The motion shall be denied if the State can show resulting prejudice from the withdrawal." Dunlap v. State, 141 Idaho 50, 61, 106 P.3d 376, 387 (2004). "'[T]he good faith, credibility, and weight of the defendant's assertions in support of his motion to withdraw his plea are matters for the trial court to decide.'"

Hartsock, 160 Idaho at 641, 377 P.3d at 1104 (brackets added) (quoting Hanslovan, 147 Idaho at 537, 211 P.3d at 782).

The district court did not err in concluding that Sittre had effectively admitted factual guilt in the plea colloquy, and therefore her claim that a transient named Barry was the driver did not present a just reason for withdrawal of the plea. (3/14/16 Tr., p. 39, L. 4 – p. 43, L. 19; p. 43, L. 23 – p. 44, L. 4.) This analysis is a correct application of the law. "[A] denial of factual guilt is not a just reason for the later withdrawal of the plea, in cases where there is some basis in the record of factual guilt …." Dopp, 124 Idaho at 486, 861 P.2d at 56. Indeed, if a claim of innocence were sufficient, "withdrawal would effectively be an automatic right." State v. Akin, 139 Idaho 160, 162-63, 75 P.3d 214, 216-17 (Ct. App. 2003) ("A declaration of innocence alone does not entitle a defendant to withdraw a guilty plea."). Sittre's claim that Barry, and not she, was the driver is properly rejected as a mere claim of innocence.

The district court was also correct on the facts. As part of the plea colloquy Sittre waived the right to a trial and to have the state prove her guilty beyond a reasonable doubt (5/11/15 Tr., p. 17, L. 25 – p. 18, L. 4); waived any defenses to the charge (5/11/15 Tr., p. 18, Ls. 5-9); admitted the facts charged in the information (5/11/15 Tr., p. 20, L. 22 – p. 21, L. 4); and admitted that she was both over the limit and driving (5/11/15 Tr., p. 21, L. 18 – p. 22, L. 14). Although Sittre claimed to have no memory of the accident (5/11/15 Tr., p. 21, Ls. 10-11; p. 23, L. 17 – p. 24, L. 1), her counsel admitted a factual basis for Sittre being the driver at that time as well because the evidence presented at the

preliminary hearing was that Sittre was the only person at the scene (5/11/15 Tr., p. 24, Ls. 2-18). The record shows no abuse of the court's discretion by concluding that Sittre had failed to present a "just reason" to withdraw her plea.

On appeal Sittre claims that the district court abused its discretion because her motion was based on "new evidence." (Appellant's brief, p. 7.) She cites State v. Hocker, 115 Idaho 137, 139 n.2, 765 P.2d 162, 164 n.2 (Ct. App. 1988), which stands for the proposition that "newly discovered" evidence may be a ground for withdrawal of a plea. However, the distinction between "new evidence" and "newly discovered evidence" is important. Having known witnesses write a letter or an affidavit might be "new evidence," but it hardly qualifies as "newly discovered" and does not justify withdrawal of a plea. Indeed, if presenting a "new" affidavit from a known witness showed just cause, "withdrawal would effectively be an automatic right." Akin, 139 Idaho at 162-63, 75 P.3d at 216-17 (applying reasoning to claim of innocence alone).

Before the district court, Sittre never claimed the evidence was "newly discovered," but consistently claimed that she was presenting "new evidence." (See R., pp. 225 (claiming "new evidence"), 240 ("Defendant has obtained information that confirms her position that she was not driving"); 3/14/16 Tr., p. 32, Ls. 2-17) (withdrawal of plea merited "given this new evidence").) Indeed, it is hard to square the appellate claim that evidence that transient Barry was the driver was "newly discovered" with Sittre's assertion that her strategy for defending the case "from day one" was that she was not the driver. (3/14/16 Tr., p. 30, L. 25 – p. 31, L. 2.)

Sittre also takes issue with the district court's statement that "[t]he idea that there was some other person driving the vehicle was clearly discounted on the record in front of Miss Sittre, who did not object to the idea that she was driving the motor vehicle" (3/14/16 Tr., p. 43, L. 23 – p. 44, L. 4), contending that she challenged the state's evidence that she was the driver at the preliminary hearing. (Appellant's brief, pp. 8-10.) That Sittre challenged the state's evidence at the preliminary hearing is irrelevant. That she did not do so at the guilty plea colloquy, as found by the district court, is amply supported by the record.

Sittre admitted the factual allegations in the information, specifically that she "did drive, manage, and operate a motor vehicle." (5/11/15 Tr., p. 20, L. 22 – p. 21, L. 4.) Although she claimed no memory of the accident because she "blacked out" (5/11/15 Tr., p. 21, Ls. 5-11), she admitted remembering drinking, that she was over legal limit, and also remembered driving after drinking alcohol (5/11/15 Tr., p. 21, L. 18 – p. 22, L. 14; p. 23, Ls. 17-23). As part of the factual basis for the plea, Sittre's trial counsel represented, based on his reading of the preliminary hearing transcript, that the state's witnesses had all testified that there was no other person involved in the accident. (5/11/15 Tr., p. 24, Ls. 4-18.) The fact that at the preliminary hearing Sittre's counsel cross-examined those witnesses does not show error by the district court. The record shows that at the guilty plea hearing Sittre specifically waived her previously asserted defense that she was not driving on the date in question.

Finally, Sittre asserts the district court's finding of prejudice to the state is unsupported. (Appellant's brief, pp. 10-11.) Because Sittre has shown no error

in the district court's determination that she failed to prove just cause for withdrawal, the Court need not reach this issue. If it does, however, Sittre has again failed to show error.

Sittre correctly recites the applicable legal standard, including: "Before sentencing, the inconvenience to the court and prosecution resulting from a change of plea is *ordinarily* slight as compared to protecting the right of the accused to trial by jury." State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008) (emphasis added). However, ordinarily the time between guilty plea and sentencing is measured in weeks, but in this case took more than a year. Sittre pled guilty on May 11, 2015. (R., pp. 195, 206-07.) She then took advantage of her release, obtained as part of the plea agreement, to abscond. (R., pp. 209-16.) She filed her motion to withdraw the plea on February 18, 2016, and the district court denied it on March 14, 2016. (R., pp. 225, 255.) Because she absconded again, her sentencing was ultimately not held until October 3, 2016. (R., pp. 296-97, 299-301.) All told, the time between the guilty plea and the order denying the motion to withdraw the plea was 10 months, and the time between the guilty plea and the sentencing was more than 16 months. This case took almost two years to resolve, about nine months of which Sittre was on the lamb. The district court's conclusion of prejudice is supported by the record.

The district court concluded that Sittre had failed to show just cause for withdrawing her guilty plea. She did not claim, much less prove, that her "new evidence" was "newly discovered." That she obtained written statements—from

persons she apparently believed during the entire proceedings were potential witnesses—did not meet her burden. Sittre has therefore failed to show error in the district court's determination there was no just cause for withdrawal of the guilty plea.

CONCLUSION

The state respectfully requests this Court to affirm the district court's judgment.

DATED this 20th day of July, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of July, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd